

E-FILED on 6/18/07IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

12 DON ROLLAND DONFRAY,

13 Plaintiff,

14 v.
15 GCFS, INC., d/b/a/ GREATER CALIFORNIA
16 FINANCIAL SERVICES, and JOHN
RAYMOND GRAVES,
17 Defendant.No. C-07-01546 RMW
ORDER DENYING PLAINTIFF'S MOTION
TO STRIKE AFFIRMATIVE DEFENSE

[Re Docket No. 8]

19 Plaintiff Don Rolland Donfray moves to strike defendant's seventh affirmative defense and
20 for a more definite statement. Plaintiff's claims arise under the Fair Debt Collection Practices Act
21 ("FDCPA"), 15 U.S.C. § 1692 *et seq.*. The affirmative defense at issue is a *bona fide* error defense
22 based on 15 U.S.C. § 1692k. Plaintiff contends that the *bona fide* error defense must be pleaded
23 with particularity under Federal Rule of Procedure 9, which provides, "In all averments of fraud or
24 mistake, the circumstances constituting fraud or mistake shall be stated with particularity." FED. R.
25 CIV. P. 9(b). Plaintiff asks the court to strike the defense as pleaded, and to permit the defendant to
26 replead it with more particularity.

27 The *bona fide* error defense permits the defendant to prove, if possible, that any actions that
28 resulted in violation of the FDCPA stemmed from a non-intentional *bona fide* error. The court finds

1 that defendants have pleaded the defense with sufficient detail to permit plaintiff to take discovery
2 on the asserted defense, particularly in light of the further explanation by defendant in its case
3 management statement and its opposition to this motion. No enhanced pleading is necessary.
4 Accordingly, the court denies plaintiff's motion to strike.

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7 DATED: 6/18/07

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Ronald M. Whyte
RONALD M. WHYTE
United States District Judge

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6 Counsel are responsible for distributing copies of this document to co-counsel that have not
7 registered for e-filing under the court's CM/ECF program.

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10 **Dated:** 6/18/07

/s/ MAG
Chambers of Judge Whyte